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1 MICHAEL J. AGOGLIA (CA SBN 154810)
2 MAGoglia@mofo.com
3 WENDY M. GARBERS (CA SBN 213208)
4 WGarbers@mofo.com
5 RITA F. LIN (CA SBN 236220)
6 RLin@mofo.com
7 MORRISON & FOERSTER LLP
8 425 Market Street
9 San Francisco, California 94105-2482
10 Telephone: 415.268.7000
11 Facsimile: 415.268.7522

12 Attorneys for Defendant
13 AURORA LOAN SERVICES LLC

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

CV 10 3118

MARITZA PINEL, individually and on behalf of
all others similarly situated,

14 Plaintiff,
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16 v.
17 AURORA LOAN SERVICES, LLC; and
18 DOES 1-23, inclusive,

19 Defendants.
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Case No.

DEFENDANT AURORA LOAN
SERVICES LLC'S NOTICE OF
REMOVAL OF CIVIL ACTION
PURSUANT TO 28 U.S.C. § 1441

ORIGINAL
FILED
JUL 16 2010
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

EMC

E-FILED

1 TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE
 2 NORTHERN DISTRICT OF CALIFORNIA:

3 PLEASE TAKE NOTICE that Defendant AURORA LOAN SERVICES LLC ("Aurora")
 4 hereby removes to this Court the state court action described below, pursuant to 28 U.S.C.
 5 § 1441.

6 **PROCEDURAL HISTORY**

7 1. On or about June 8, 2010, plaintiff filed a putative class action complaint against
 8 Aurora Loan Services LLC in the Superior Court of the State of California, County of San Mateo,
 9 captioned *MARITZA PINEL, individually and on behalf of all others similarly situated vs.*
 10 *AURORA LOAN SERVICES, LLC; and DOES 1-25, inclusive*, Case No. CIV 495782.

11 2. On June 17, 2010, plaintiff personally served a copy of the summons and complaint
 12 on Aurora's registered agent. A true and correct copy of the summons and complaint received by
 13 Aurora is attached hereto as Exhibit A. A true and correct copy of "all [remaining] process,
 14 pleadings and orders served upon" Aurora to date while this action was pending in San Mateo
 15 Superior Court is attached hereto as Exhibit B. 28 U.S.C. § 1446(a).

16 3. The complaint asserts four causes of action: (1) violation of California's Unfair
 17 Competition Law, Business & Professions Code §§ 17200 *et seq.*; (2) breach of the covenant of
 18 good faith and fair dealing; (3) unjust enrichment; and (4) declaratory relief. The complaint
 19 purports to bring these claims on behalf of a class of:

20 All California residents whose mortgage loans are serviced by
 21 Aurora, and who are either (1) in default or (2) have entered into
 loan workout agreement [sic] with Aurora.

22 (Compl. ¶ 38.)

23 **TIMELINESS OF REMOVAL**

24 4. Plaintiff hand-served Aurora's registered agent with a copy of the summons and
 25 complaint on June 17, 2010. This notice of removal is timely under 28 U.S.C. § 1446(b) and Fed.
 26 R. Civ. P. 6(a) because this notice is filed within thirty (30) days after service of the summons and
 27 complaint was effectuated upon Aurora.

BASIS FOR REMOVAL JURISDICTION

5. Generally. This action is a civil class action over which this Court has original jurisdiction pursuant to 28 U.S.C. § 1332(d)(2)(A), as amended by the Class Action Fairness Act, Pub. L. No. 109-2, 119 Stat. 4 (2005), and is one that may be removed to this Court pursuant to the provisions of 28 U.S.C. §§ 1446 and 1453. In this putative class action, at least one member of the putative class of plaintiffs is a citizen of a state different from that of Aurora, and the amount that plaintiff's allegations place in controversy exceeds \$5,000,000, exclusive of interest and costs.

6. Covered Class Action. The Class Action Fairness Act defines a “class action” as “any civil action filed under rule 23 of the Federal Rules of Civil Procedure or similar State statute . . . authorizing an action to be brought by 1 or more representative persons as a class action.” See 28 U.S.C. § 1332(d)(1)(B). The present action is a “class action” for purposes of the Class Action Fairness Act. Plaintiff brings her action individually and on behalf of all California residents whose mortgage loans are serviced by Aurora, and who either are in default or have entered into loan workout agreements with Aurora. (Compl. ¶ 38.) Plaintiff alleges that “the Class is comprised of thousands of borrowers throughout California, making joinder impractical.” (Compl. ¶ 40.)

7. Diversity. The diversity requirement of 28 U.S.C. § 1332(d)(2) is satisfied.

- a. Plaintiff is a citizen of California.
- b. Aurora Loan Services LLC is a citizen of Delaware. Aurora Loan Services LLC is a limited liability company. (Compl. ¶ 10.) A limited liability company is a citizen of every state of which its members are citizens. *Johnson v. Columbia Props. Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006). Aurora Loan Services LLC's sole member is Aurora Bank FSB. Aurora Bank is a citizen of Delaware, because it is a federally chartered savings association headquartered in Delaware. See 12 U.S.C. § 1464(x) (for diversity purposes, a "Federal savings association

1 shall be considered to be a citizen only of the State in which such savings
 2 association has its home office”).

3 c. The citizenship of defendants sued as “Doe” defendants is disregarded for
 4 purposes of removal. 28 U.S.C. § 1441(a).

5 8. Matter in Controversy. Pursuant to 28 U.S.C. § 1332(d)(2), this Court has
 6 “original jurisdiction of any civil action in which the matter in controversy exceeds the sum or
 7 value of \$5,000,000 exclusive of interest and costs.” As provided in 28 U.S.C. § 1332(d)(6), “[i]n
 8 any class action, the claims of the individual class members shall be aggregated to determine
 9 whether the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest
 10 and costs.”

11 9. Aurora does not concede that it is actually liable to plaintiff or the putative class in
 12 any amount. Indeed, Aurora contends that plaintiff and the class she purports to represent are
 13 entitled to recover nothing. However, a fair reading of the allegations of the complaint reveals
 14 the matter in controversy exceeds the jurisdictional minimum of \$5,000,000.

15 10. The complaint alleges that Aurora wrongfully “lure[d]” plaintiff and the putative
 16 class into signing loan workout agreements that are purportedly a “sham” because they “do not
 17 provide meaningful modification to financially distressed borrowers.” (Compl. ¶¶ 21-22.)
 18 Plaintiff alleges that defendant wrongfully “collected payments under the workout agreements
 19 even though the agreements are designed never to lead to an actual loan modification” (Compl.
 20 ¶ 55), and that she and other putative class members were “injured by virtue of making payments
 21 for a sham loan modification.” (Compl. ¶ 26.)

22 11. Plaintiff seeks disgorgement of all revenues obtained by Aurora as a result of the
 23 allegedly wrongful loan workout agreements. (Compl. ¶¶ 57, 65, Prayer ¶ 5.) That request for
 24 disgorgement alone puts more than \$5,000,000 in controversy. Plaintiff alleges that she made a
 25 total of \$9,755.00 in payments pursuant to her loan workout agreement. (Compl. ¶¶ 33-35.) She
 26 further alleges that her “claims are typical of the claims of the Class” (Compl. ¶ 44), and that the
 27 class consists of “the Class is comprised of *thousands* of borrowers.” (Compl. ¶ 40 (emphasis
 28 added); *see also* Compl. ¶ 13 (alleging that Aurora services 400,000 borrowers nationwide).)

1 Even if the class were comprised of only 2,000 borrowers, \$9,755.00 multiplied over 2,000
2 borrowers yields an amount in controversy of \$19,510,000.00 — well beyond the required
3 \$5,000,000 threshold. A review of Aurora's records confirms that Aurora has collected more
4 than \$5,000,000 in payments from California residents pursuant to loan workout agreements since
5 June 8, 2006 (representing a four-year limitations period).

6 12. In addition, plaintiff challenges the alleged imposition of "junk fees as part of
7 [Aurora's] workout program." (Compl. ¶ 23.) Specifically, plaintiff asserts that she was
8 wrongfully charged \$1,150.00 in legal fees, and \$1,403.75 in corporate advances, for a total of
9 \$2,553.75. (*Id.*) Taking as true plaintiffs' allegations that she is typical and that the class consists
10 of thousands of borrowers (Compl. ¶¶ 40, 44), an allegedly typical fee amount of \$2,553.75
11 multiplied across 2,000 borrowers already yields an amount in controversy of more than
12 \$5,000,000.

13 13. The complaint also prays for an award of attorneys' fees, compensatory damages,
14 and injunctive and declaratory relief. (Compl. Prayer.) This requested relief further demonstrates
15 that the amount in controversy exceeds \$5,000,000.

16 14. No Class Action Fairness Act Exclusions Apply. This action does not fall within
17 the permissive exclusion of 28 U.S.C. § 1332(d)(3), nor the mandatory exclusions of section
18 1332(d)(4), because Aurora is not a citizen of California.

19 15. For the reasons stated above, this Court has original jurisdiction over this action
20 pursuant to 28 U.S.C. § 1332(d)(2)(A), and this action is removable pursuant to 28 U.S.C.
21 § 1441(b).

22 **NOTICE TO STATE COURT AND PLAINTIFF**

23 15. Counsel for Aurora certifies that pursuant to 28 U.S.C. § 1446(d), copies of this
24 Notice of Removal will be promptly filed with the Clerk of the Superior Court of the State of
25 California, San Mateo County, and promptly served on plaintiff.

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1 Dated: July16, 2010

MORRISON & FOERSTER LLP

2 By: 

3 Wendy M. Garbers

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5 Attorneys for Defendant
6 AURORA LOAN SERVICES LLC

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